

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CLINTON JOSEPH BARNER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-00264-CDB (SS)

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND AFFIRMING DECISION OF  
COMMISSIONER OF SOCIAL  
SECURITY<sup>1</sup>

(Docs. 21, 23, 25)

Plaintiff Clinton Joseph Barner ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying his applications for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the parties' briefs, which were submitted without oral argument. (Docs. 21, 23, 25). Upon review of the Administrative Record ("AR") and the parties' briefs, the Court finds and rules as follows.

**I. BACKGROUND**

**A. Administrative Proceedings and ALJ's Decision**

On May 11, 2018, Plaintiff filed a Title II application for disability insurance benefits and

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<sup>1</sup> Based on the parties' consent to magistrate judge jurisdiction for all purposes, this action was reassigned on January 28, 2022, pursuant to 28 U.S.C. § 636(c)(1). (Doc. 10).

1 Title XVI application for supplemental security income. (AR 13, 244-51). Plaintiff's  
2 applications were denied initially and upon reconsideration, and Plaintiff requested a hearing  
3 before an administrative law judge ("ALJ"). (AR 68-137, 159-61). On April 27, 2020, ALJ  
4 Cynthia Hale held a hearing, during which Plaintiff, represented by counsel, and an independent  
5 vocational expert testified. (AR 33-67). The ALJ issued her decision on August 28, 2020,  
6 finding Plaintiff not disabled. (AR 14-27). On January 7, 2021, the Appeals Council declined  
7 Plaintiff's request for review. (AR 5-7).

8 In her decision, the ALJ engaged in the five-step sequential evaluation process set forth by  
9 the Social Security Administration. 20 C.F.R. §§ 404.1520(a), 416.920(a). At step one, the ALJ  
10 found Plaintiff had not engaged in substantial gainful activity since September 17, 2017, the  
11 alleged onset date. (AR 17). At step two, the ALJ determined that Plaintiff had "the following  
12 severe impairments: a history of Ewing's sarcoma, in remission; a history of left tympano-  
13 mastoidectomy with revision with severe to profound left mixed hearing loss; left facial palsy;  
14 intellectual disability; learning disability; and non-epileptic seizures." (AR 17).

15 At step three, the ALJ found that Plaintiff did not have an impairment, or combination of  
16 impairments, that met or medically exceeds the severity of one of the listed impairments in 20  
17 C.F.R. Part 404, Subpart P, Appendix 1. Of relevance to the arguments before the Court, the ALJ  
18 specifically considered Plaintiff's seizures under listing 11.02 and intellectual disability under  
19 listing 12.05 and found Plaintiff did not meet the criteria for either listing. (AR 18-20).

20 The ALJ determined Plaintiff had the residual functional capacity ("RFC") to: "perform a  
21 full range of work at all exertional levels but with the following non-exertional limitations: never  
22 climb ladders, ropes, or scaffolds; no more than occasional balancing; only have unilateral  
23 hearing and must avoid a noisy environment; needs to avoid concentrated exposure to loud noise,  
24 vibration, or work hazards, such as moving machinery and unprotected heights; limited to simple,  
25 routine, and repetitive tasks, no production rate or constant motion job tasks; no job tasks that  
26 require reading more than simple notes or signs and no more than basic math." (AR 21).

27 In determining Plaintiff's RFC, the ALJ considered Plaintiff's symptom testimony,  
28 finding "that the [Plaintiff's] medically determinable impairments could reasonably be expected

1 to cause the alleged symptoms; however, the [Plaintiff's] statements concerning the intensity,  
2 persistence and limiting effects of these symptoms are not entirely consistent with the medical  
3 evidence and other evidence in the record.” (AR 22). The ALJ noted that while Plaintiff had a  
4 history of Ewing's sarcoma, he responded well to treatment and remained in remission. (AR 22).  
5 Plaintiff also has facial palsy but still has fluid speech, which was clear and coherent on exam.  
6 (AR 22). Due to “long-term complications” impacting Plaintiff's hearing in his left ear, the ALJ  
7 limited his exposure to loud noise but found no other limitations were warranted. (AR 22). The  
8 ALJ cited Plaintiff's “normal hearing abilities in his right ear and excellent word discrimination  
9 testing.” (AR 22).

10 As to Plaintiff's seizures, the ALJ acknowledged Plaintiff's reports of episodes of  
11 dizziness and loss of balance, but noted that “[i]maging of the head was essentially  
12 unremarkable, aside from small cavernous malformations.” (AR 22). The ALJ also noted that  
13 Plaintiff's balance fluctuated, and his gait was at times unsteady. (AR 22). Accordingly, the ALJ  
14 included limitations regarding heights, balancing, and the use of machinery. (AR 22). Based on  
15 Plaintiff's general improvement with treatment and physical therapy, the ALJ found additional  
16 limitations were not warranted. (AR 22-23).

17 The ALJ also discussed Plaintiff's intellectual disability and learning difficulties, noting a  
18 history of special education, a fourth grade reading level, and a full-scale IQ score of 70. (AR  
19 23). Plaintiff also had difficulty recalling the number of states or the current president and  
20 completing multi-step tasks. (AR 23). Based on this evidence, the ALJ included limitations  
21 reflected in the RFC but found no additional limitations were warranted based on records  
22 indicating he was alert, attentive, and cooperative during exams; had clear, coherent, and well-  
23 organized thoughts; had not been hospitalized or had suicidal ideation; and had previously been  
24 able to work despite his conditions. (AR 23).

25 Additionally, the ALJ considered medical opinions in the record. The ALJ found the state  
26 agency consultants' opinions persuasive as to both Plaintiff's physical and mental limitations,  
27 concluding the opinions were “supported by detailed explanations and are consistent with the  
28 overall evidence.” (AR 23). The ALJ also found persuasive the opinion of a consultative

1 examiner. (AR 24). Despite finding these opinions persuasive, the ALJ included additional  
2 limitations based on Plaintiff's subjective complaints. (AR 24).

3 At step four, the ALJ found that Plaintiff was unable to perform any past relevant work.  
4 Finally, at step five, she found that, per testimony of the vocational expert, Plaintiff could perform  
5 jobs that exist in significant numbers in the national economy, such as grocery bagger, lab  
6 cleaner, and housekeeping cleaner. (AR 25-26). Thus, Plaintiff had not been under a disability  
7 from September 17, 2017, through the date of the decision. (AR 26).

### 8 **B. Medical Record and Hearing Testimony**

9 The relevant hearing testimony and medical record were reviewed by the Court and will  
10 be referenced below as necessary to this Court's decision.

## 11 **II. STANDARD OF REVIEW**

12 A district court's review of a final decision of the Commissioner of Social Security is  
13 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the  
14 Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or  
15 is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial  
16 evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a  
17 conclusion." (*Id.* at 1159) (quotation and citation omitted). Stated differently, substantial  
18 evidence equates to "more than a mere scintilla[,] but less than a preponderance." (*Id.*) (quotation  
19 and citation omitted). "It is such relevant evidence as a reasonable mind might accept as adequate  
20 to support a conclusion." *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In  
21 determining whether the standard has been satisfied, a reviewing court must consider the entire  
22 record as a whole rather than searching for supporting evidence in isolation. (*Id.*).

23 The court will review only the reasons provided by the ALJ in the disability determination  
24 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,  
25 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its  
26 judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion when the  
27 evidence is susceptible to more than one rational interpretation." *Tommasetti v. Astrue*, 533 F.3d  
28 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ's decision on account

1 of an error that is harmless. (*Id.*). An error is harmless where it is “inconsequential to the  
2 [ALJ’s] ultimate nondisability determination.” (*Id.*) (quotation and citation omitted). The party  
3 appealing the ALJ’s decision generally bears the burden of establishing that it was  
4 harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

5 A claimant must satisfy two conditions to be considered “disabled” and eligible for  
6 benefits within the meaning of the Social Security Act. First, the claimant must be “unable to  
7 engage in any substantial gainful activity by reason of any medically determinable physical or  
8 mental impairment which can be expected to result in death or which has lasted or can be  
9 expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §  
10 1382c(a)(3)(A). Second, the claimant’s impairment must be “of such severity that he is not only  
11 unable to do his previous work[,] but cannot, considering his age, education, and work  
12 experience, engage in any other kind of substantial gainful work which exists in the national  
13 economy.” 42 U.S.C. § 1382c(a)(3)(B).

14 The Commissioner has established a five-step sequential analysis to determine whether a  
15 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the  
16 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the  
17 claimant is engaged in “substantial gainful activity,” the Commissioner must find that the  
18 claimant is not disabled. 20 C.F.R. § 416.920(b).

19 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step  
20 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20  
21 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of  
22 impairments which significantly limits [his or her] physical or mental ability to do basic work  
23 activities,” the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s  
24 impairment does not satisfy this severity threshold, however, the Commissioner must find that the  
25 claimant is not disabled. (*Id.*).

26 At step three, the Commissioner compares the claimant’s impairment to impairments  
27 recognized by the Commissioner to be so severe as to preclude a person from engaging in  
28 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the claimant  
2 disabled and award benefits. 20 C.F.R. § 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the severity of the  
4 enumerated impairments, the Commissioner must pause to assess the claimant's "residual  
5 functional capacity." Residual functional capacity (RFC), defined generally as the claimant's  
6 ability to perform physical and mental work activities on a sustained basis despite his or her  
7 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
8 analysis.

9 At step four, the Commissioner considers whether, in view of the claimant's RFC, the  
10 claimant is capable of performing work that he or she has performed in the past (past relevant  
11 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant  
12 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If  
13 the claimant is incapable of performing such work, the analysis proceeds to step five.

14 At step five, the Commissioner considers whether, in view of the claimant's RFC, the  
15 claimant is capable of performing other work in the national economy. 20 C.F.R. §  
16 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational  
17 factors such as the claimant's age, education, and past work experience. (*Id.*). If the claimant is  
18 capable of adjusting to other work, the Commissioner must find that the claimant is not  
19 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the  
20 analysis concludes with a finding that the claimant is disabled and is therefore entitled to  
21 benefits. (*Id.*).

22 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,  
23 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the  
24 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such  
25 work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran*  
26 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 27 **III. ISSUES AND ANALYSIS**

28 Plaintiff seeks judicial review of the Commissioner's final decision denying his

1 applications. (Doc. 1). Plaintiff raises the following arguments:

- 2 1. The ALJ's determination that his seizure disorder, either alone or in combination with
- 3 his borderline intellectual functioning, did not meet or equal listings 11.02 or 12.05
- 4 was not supported by substantial evidence. (Doc. 21 at 2).
- 5 2. The mental RFC is not supported by substantial evidence in the record. (*Id.*).
- 6 3. The ALJ committed harmful error by failing to provide "clear and convincing"
- 7 reasons for rejecting symptomology evidence. (*Id.*).

8 **A. Whether the ALJ Properly Concluded Plaintiff Failed to Meet or Equal Listings**  
 9 **11.02 or 12.05**

10 Plaintiff first challenges the ALJ's step three conclusion that he did not meet or equal a  
 11 listing. "The listings describe impairments that are considered to be severe enough to prevent an  
 12 individual from doing any gainful activity." *Kitchen v. Kijakazi*, 82 F.4th 732, 741 (9th Cir.  
 13 2023) (quotation and citation omitted). For an impairment to meet a listing, the claimant "must  
 14 meet *all* of the specified medical criteria" for the listing. *Id.* (emphasis in original) "If an  
 15 impairment does not meet a listing, it may nevertheless be medically equivalent to a listed  
 16 impairment if the claimant's symptoms, signs, and laboratory findings are at least equal in  
 17 severity to those of a listed impairment." *Id.* However, "a claimant cannot base a claim of  
 18 equivalence on symptoms alone" and "the claimant's impairment does not medically equal a  
 19 listed impairment unless the claimant has signs and laboratory findings that are equal in severity  
 20 to those set forth in a listing." *Ford v. Saul*, 950 F.3d 1141, 1148-49 (9th Cir. 2020). "The  
 21 burden is on the claimant to provide evidence that her impairments meet or equal a Listing at step  
 22 three of the sequential evaluation process." *Fleming v. Comm'r of Soc. Sec. Admin.*, 500 F.  
 23 App'x 577, 579 (9th Cir. 2012) (citing *Burch v. Barnhart*, 400 F.3d 676, 683 (9th Cir. 2005)).

24 Plaintiff argues there is "substantial objective evidence of record that [his] seizure  
 25 disorder meets the requirements of listing 11.02B because the record shows he "started suffering  
 26 from seizure activity every day, for at least three consecutive months while adhering to prescribed  
 27 increasing dosages of Keppra and continuing during the period at issue, that is, after he began  
 28 prescribed treatment, in December 19, 2017 through the latest treatment record per the

1 requirements of Listing 11.02B and 11.00(C)(H)(2, 4).” (Doc. 21 at 8 (emphasis and record cites  
2 omitted)). Plaintiff argues the “ALJ harmfully and erroneously ‘cherry picks’ evidence and  
3 misinterprets the record in order to imply that Mr. Berner’s seizure activity was completely  
4 ameliorated when [he] was ‘compliant’ with medication.” (*Id.* at 9). Even if Plaintiff did not  
5 meet listing 11.02(b), he argues the ALJ further harmfully erred “by failing to discuss whether  
6 she considered ... the severity of [his] severe intellectual and learning impairments in  
7 combination with his severe seizure disorder symptomology in relation to Listings 11.02B and  
8 12.05,” and asserts that based on the “extensive evidence” that he had “significant limitations in  
9 his ability to function independently,” the ALJ “had a duty to call a neurological ME or contact  
10 Mr. Barner’s treating neurologist” to assist in determining whether he met the listings. (*Id.* at 11-  
11 12).

12 In response, the Commissioner argues Plaintiff failed to meet his burden of showing he  
13 met or equaled either listing 11.02B or 12.05. (Doc. 23 at 4). As to listing 11.02B, the  
14 Commissioner asserts the listing applies only to epileptic seizures, but the ALJ concluded  
15 Plaintiff suffers from non-epileptic seizures and “the record is replete with objective findings  
16 casting doubt as to whether they were in fact related to or caused by epilepsy.” (*Id.* at 5-6). The  
17 Commissioner indicates the ALJ “did find that Plaintiff did ‘not have an impairment or  
18 combination of impairments that meets or medically equals the severity of’ a Listing” and  
19 Plaintiff has not shown that the ALJ had a duty to further develop the record. (*Id.* at 9-10).

20 Plaintiff replies that “[d]espite Defense’s claim to the contrary ..., there is substantial  
21 evidence of record that Mr. Barner’s seizure disorder meets or equals Listing 11.02B.” (Doc. 25  
22 at 2). Plaintiff argues the ALJ did not rely on his seizures being non-epileptic in concluding he  
23 did not meet the listing, and “the Defense is incorrect that [he] was diagnosed with only  
24 psychogenic, non-epileptic seizures.” (*Id.* at 2-3).

25 Listing 11.02B applies to epilepsy characterized by dyscognitive seizures occurring at  
26 least once a week for at least three consecutive months despite adherence to prescribed treatment.  
27 20 C.F.R. § Pt. 404, Subpt. P, App. 1 § 11.02B. Under the listings, epilepsy is defined as “a  
28 pattern of recurrent and unprovoked seizures that are manifestations of abnormal electrical



1 activity in the brain.” *Id.* at § 11.00H1. However, “psychogenic nonepileptic seizures and  
2 pseudoseizures are not epileptic seizures for the purpose of 11.02” and these seizures are  
3 evaluated as mental disorders. *Id.* “Dyscognitive seizures are characterized by alteration of  
4 consciousness without convulsions or loss of muscle control. During the seizure, blank staring,  
5 change of facial expression, and automatisms (such as lip smacking, chewing or swallowing, or  
6 repetitive simple actions, such as gestures or verbal utterances may occur.” *Id.* at § 11.00H1b.

7 Here, the ALJ concluded Plaintiff’s seizures did not satisfy the criteria of the listing  
8 because medication helped Plaintiff’s seizures “when he was able to take it consistently;” EEG  
9 results “showed occasional isolated frontally predominant spike and wave complexes, but no ictal  
10 changes with any of the reported clinical events;” Plaintiff’s coordination and balance improved  
11 with physical therapy; and Plaintiff ambulated independently and had mostly normal  
12 musculoskeletal strength. (AR 18). The records cited by the ALJ include notes of Plaintiff’s  
13 report that Keppra “helped a lot” and reduced his episodes, and providers’ observations that  
14 Plaintiff ambulated normally without an assistive device, had negative Romberg and normal  
15 musculoskeletal strength, and benefited from physical therapy. (AR 708, 750, 833-34, 844, 898,  
16 920-21, 923, 928, 948).

17 The Court concludes Plaintiff has not met his burden of showing that he met or equaled  
18 listing 11.02B. As correctly noted by Defendant (Doc. 23 at 4-5), earlier in the decision the ALJ  
19 categorized Plaintiff’s seizures as “non-epileptic” (AR 17), such that listing 11.02—applying to  
20 *epileptic* seizures—does not apply. Additionally, while Plaintiff points to evidence he asserts  
21 supports that he continued to have seizures multiple times a day while on medication such that he  
22 meets the criteria of the listing, the records cited largely reflect notes of Plaintiff’s own reports  
23 concerning the duration and frequency of the seizures, rather than objective medical evidence  
24 supporting such a conclusion. (*See, e.g.*, AR 707-08; 834-35, 836-37, 840, 843, 1001-02). In  
25 some of the same records, Plaintiff’s providers expressed doubts as to whether Plaintiff was  
26 indeed experiencing seizures. (AR 845 (“He had a staring spell in front of me that did not seem  
27 epileptic.”); 903-05 (ordering repeat EEG to confirm “still no evidence of seizure” and indicating  
28 episodes “may not be seizure” but rather “symptoms may be related to the balance issues”); 944-

1 45 (Plaintiff's mother's description of episode "confirm[ed] previous descriptions that call into  
2 question the likelihood that these events are epileptic in nature" and noting epilepsy was  
3 "clinically unclear"). Based on the medical records, substantial evidence supports the ALJ's  
4 conclusion that Plaintiff did not meet or equal listing 11.02B. Even if the evidence Plaintiff cites  
5 is enough to warrant a different conclusion, "[w]here the evidence is susceptible to more than one  
6 rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be  
7 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

8 Concerning Plaintiff's allegation that the ALJ failed to consider whether the combined  
9 effects of his intellectual disability and seizures equaled listings 11.02B and 12.05, the Court  
10 finds no error. "An ALJ is not required to discuss the combined effects of a claimant's  
11 impairments or compare them to any listing in an equivalency determination, unless the claimant  
12 presents evidence in an effort to establish equivalence." *Burch*, 400 F.3d at 683. Here, Plaintiff's  
13 counsel submitted a brief prior to the hearing arguing Plaintiff met listing 11.02B and argued at  
14 the hearing that listing 12.05 should also be considered because of Claimant's IQ and inability to  
15 adapt to self-care. (AR 39, 236-40). But at no point did he argue the ALJ should consider the  
16 combined effects or address how the effects established equivalence. Even before this Court,  
17 Plaintiff did not identify the criteria of listing 12.05 or argue how he met or equaled that criteria.  
18 Thus, the ALJ was not required to provide any more detailed discussion than that included in her  
19 decision. *Burch*, 400 F.3d at 683.

20 To the extent Plaintiff asserts the ALJ erred by failing to "call a neurological ME or  
21 contact [his] treating neurologist to make a determination regarding whether the combination of  
22 [his] severe seizure disorder and intellectual/learning disabilities would equal Listings 12.05 or  
23 11.02B," this argument also fails. "An ALJ's duty to develop the record further is triggered only  
24 when there is ambiguous evidence or when the record is inadequate to allow for proper evaluation  
25 of the evidence." *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). Here, however,  
26 there is no indication that the record was ambiguous or inadequate to allow for proper evaluation.

27 Accordingly, the ALJ did not err in concluding Plaintiff did not meet or equal listings  
28 11.02B or 12.05.

**B. Whether Substantial Evidence Supports the Mental RFC**

Plaintiff next challenges the mental RFC assigned by the ALJ. A claimant's RFC is "the most [a claimant] can still do despite [his] limitations." 20 C.F.R. §§ 404.1545(a), 416.945(a); *see* 20 C.F.R. part 404, Subpart P, Appendix 2, § 200.00(c) (defining an RFC as the "maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs"). In determining a claimant's RFC, an ALJ "must consider all relevant evidence in the record, including, *inter alia*, medical records, lay evidence, and the effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment." *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006) (quotations and citations omitted). In reviewing findings of fact with respect to RFC assessments, this Court determines whether the decision is supported by substantial evidence. 42 U.S.C. § 405(g).

Here, the ALJ formulated the following RFC:

After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform a full range of work at all exertional levels but with the following non-exertional limitations: never climb ladders, ropes, or scaffolds; no more than occasional balancing; only have unilateral hearing and must avoid a noisy environment; needs to avoid concentrated exposure to loud noise, vibration, or work hazards, such as moving machinery and unprotected heights; limited to simple, routine, and repetitive tasks, no production rate or constant motion job tasks; no job tasks that require reading more than simple notes or signs and no more than basic math.

(AR 21).

In support of the RFC, the ALJ provided a summary of the relevant records and the limitations she found supported by those records. As to Plaintiff's mental abilities, the ALJ noted that Plaintiff had "been diagnosed with an intellectual and learning disability," read at a fourth-grade level, complained of memory difficulties, and struggled to complete multi-step tasks. (AR 23, citing AR 691, 795, 879, 929). Additionally, the ALJ indicated the records reflected that Plaintiff had "a full-scale IQ score of 70," below average attentional processing of information, low-average perceptual reasoning, borderline working memory and processing speed, and "struggled to hold employment due to learning difficulties." (AR 23, citing AR 688, 691, 881). Thus, in setting forth the RFC, the ALJ limited Plaintiff to simple routine, and repetitive tasks

1 with no production rate or constant motion job tasks and no job tasks that require reading more  
2 than simple notes or signs and no more than basic math. (AR 23).

3 The ALJ also relied on medical opinions in formulating the RFC. The state agency  
4 consultants opined that Plaintiff “was able to understand, remember, and carryout simple  
5 instructions; sustain concentration, persistence, and pace; interact with others; and maintain safety  
6 awareness and respond appropriately to routine changes.” (AR 24, citing AR 68-101, 104-137).  
7 A consultative examiner opined that Plaintiff would “not have difficulty performing simple,  
8 repetitive tasks on a regular basis.” (AR 24, citing AR 875-83). The ALJ found these opinions  
9 persuasive based on indications in the record that Plaintiff was alert, attentive, and cooperative on  
10 exam; his memory was intact, including recalling three of three objects; and his thoughts were  
11 clear, coherent, and well organized. (AR 24, citing AR 690, 879, 898, 1059). However, despite  
12 finding the opined limitations consistent with the overall evidence, the ALJ imposed additional  
13 limitations based on the testing and subjective complaints. (AR 24).

14 Plaintiff argues the mental RFC is not supported by substantial evidence because although  
15 the ALJ found the opinions persuasive, “the ALJ stated that she was ‘consider[ing] the testing and  
16 subjective complaints’ and based on her own review and interpretation of the records, adding  
17 specific limitations regarding reading and math deficits.” (Doc. 21 at 12). Plaintiff asserts “the  
18 ALJ had a duty to further develop the record and send [him] for additional intellectual testing and  
19 interpretation of that testing.” (*Id.* at 13).

20 The Commissioner responds that the ALJ appropriately “assessed an RFC based on the  
21 objective medical evidence, improvement with treatment, medical opinion evidence, Plaintiff’s  
22 past work history and subjective symptoms, and third-party statements.” (Doc. 23 at 11). The  
23 Commissioner asserts that because “the RFC is a *legal*, not *medical* determination,” “the RFC is  
24 informed by the medical evidence but is not circumscribed by it, including medical opinions.”  
25 (*Id.* at 12). Concerning whether the ALJ had a duty to develop the record further, the  
26 Commissioner argues Plaintiff “failed to establish how or why that is so.” (*Id.*).

27 Plaintiff replies that while “the ALJ is the final arbiter of the MRFC/RFC decision, the  
28 ALJ is not permitted to review evidence on her own and formulate a function-by-function

1 MRFC/RFC analysis, as the ALJ did here.” (Doc. 25 at 10).

2 Based on the records cited by the ALJ, substantial evidence supports the assigned RFC.  
3 Plaintiff is correct that “[a]n ALJ is not allowed to use his own medical judgment in lieu of that of  
4 a medical expert.” *Vaughn v. Berryhill*, 242 F. Supp. 3d 998, 1009-10 (E.D. Cal. 2017)  
5 (collecting cases). However, there is nothing in the ALJ’s decision indicating that she interpreted  
6 raw medical data or relied on her own medical judgment in constructing the RFC. Nor is there  
7 anything suggesting to the Court that the record was ambiguous or inadequate as would be  
8 necessary to trigger the ALJ’s duty to further develop the record. *See Mayes*, 276 F.3d at 459-60.  
9 Rather, the ALJ relied on the expert opinions and imposed limitations *greater* than those opined  
10 by the experts based on the subjective testimony and test results concerning Plaintiff’s abilities.  
11 Because the additional limitations resulted in a narrower RFC than that considered by the experts,  
12 any alleged error in imposing the additional limitations was harmless. *See Johnson v. Shalala*, 60  
13 F.3d 1428, 1436 n.9 (9th Cir. 1995) (finding “overinclusion of debilitating factors” in  
14 hypothetical to vocational expert that were not included in the ultimate RFC was “harmless  
15 simply because if a person can do a job that requires increased concentration, the claimant is also  
16 capable of performing work that requires less concentration”).

17 Thus, Plaintiff’s challenge to the mental RFC fails.

18 **C. Whether the ALJ Failed to Provide “Clear and Convincing” Reasons to Reject**  
19 **Symptomology Evidence**

20 Plaintiff’s final argument attacks the ALJ’s consideration of his testimony regarding his  
21 symptoms. An ALJ engages in a two-step analysis when evaluating a claimant’s testimony  
22 regarding subjective pain or symptoms. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir.  
23 2007). The ALJ must determine whether there is “objective medical evidence of an underlying  
24 impairment which could reasonably be expected to produce the pain or other symptoms alleged.”  
25 *Id.* (internal quotation marks omitted). “The claimant is not required to show that this impairment  
26 could reasonably be expected to cause the severity of the symptom he has alleged; he need only  
27 show that it could reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572  
28 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

1 Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the  
2 ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ]  
3 gives specific, clear and convincing reasons for the rejection.” *Ghanim v. Colvin*, 763 F.3d 1154,  
4 1163 (9th Cir. 2014) (internal citations and quotations omitted). “General findings are  
5 insufficient; rather, the ALJ must identify what testimony is not credible and what evidence  
6 undermines the claimant’s complaints.” *Id.*; see *Thomas*, 278 F.3d at 958 (“[T]he ALJ must make  
7 a credibility determination with findings sufficiently specific to permit the court to conclude that  
8 the ALJ did not arbitrarily discredit claimant’s testimony.”).

9 However, “[t]he standard isn’t whether [the] court is convinced, but instead, whether the  
10 ALJ’s rational is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th  
11 489, 499 (9th Cir. 2022). An ALJ’s reasonings as to subjective testimony “must be supported by  
12 substantial evidence in the record as a whole.” *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.  
13 1995); see *Carmickle v. Comm’r, SSA*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Accordingly, our  
14 next task is to determine whether the ALJ’s adverse credibility finding of Carmickle’s testimony  
15 is supported by substantial evidence under the clear-and-convincing standard.”).

16 Plaintiff argues the ALJ failed to provide “clear and convincing” reasons for rejecting his  
17 symptomology testimony because the ALJ summarized his “testimony, function reports and third  
18 party function reports in one portion of the decision and subsequently, absent any rational  
19 analysis to any specific symptomology testimony,” summarized the seizure medical evidence  
20 before concluding the evidence was not consistent with the alleged limitations. (Doc. 21 at 13-  
21 14).

22 In response, the Commissioner asserts “the ALJ accepted many of Plaintiff’s symptoms  
23 and assessed multiple, robust limitations in the RFC to account for them” but also “reasonably  
24 concluded Plaintiff’s claims as to his symptoms were otherwise inconsistent with the evidence.”  
25 (Doc. 23 at 13). The Commissioner argues that substantial evidence supports the ALJ’s treatment  
26 of Plaintiff’s symptom testimony such that the decision must be affirmed. (*Id.* at 13-15).

27 Plaintiff replies that “SSA law in this circuit is clear that Defense/Commissioner cannot  
28 attempt to remedy the ALJ’s non-specific symptomology determination by pulling evidence from

1 the ALJ's *summary* of the medical record, *post hoc* and offering it as the ALJ's own 'proper'  
2 analysis of the relationship between testimony and medical evidence." (Doc. 25 at 10-11).

3 At the hearing, Plaintiff testified he was in the special education program throughout high  
4 school, with math and English being the most difficult for him. (AR 40-41). He last worked in  
5 2017, having worked as a general laborer for almost a year. (AR 42). Plaintiff did not have  
6 difficulties with this position, but the job ended when he missed a day of work due to a seizure.  
7 (AR 43-44). He reported experiencing seizures ranging from small to big that resulted in  
8 confusion and difficulty walking afterwards. (AR 45-47). He began taking medication, which  
9 "actually helped" after increasing the dosage. (AR 48). He reported only being able to focus on  
10 television for approximately 24 minutes. (AR 52). When asked by the ALJ if any other problems  
11 beyond his seizures would affect his ability to work, Plaintiff answered no. (AR 55). He also  
12 told the ALJ that after a small seizure it took "maybe 30 seconds for [him] to just like regain [his]  
13 strength and consciousness and just continue on throughout the day." (AR 56). Additionally,  
14 Plaintiff reported having problems walking straight. (AR 59).

15 In her decision, the ALJ cited Plaintiff's testimony that he has difficulty walking and has  
16 multiple seizures with confusion and lightheadedness. (AR 21). The ALJ also recognized  
17 Claimant's allegations of limitations related to walking, talking, hearing, understanding, and  
18 following instructions contained in his function report, as well as reports of third parties. (AR 21,  
19 citing (5E, 4E, 17E, 19E, 14E, 15E, 18E, 20E). The ALJ concluded that Plaintiff's "medically  
20 determinable impairments could reasonably be expected to cause the alleged symptoms; however,  
21 [Plaintiff's] statements concerning the intensity, persistence and limiting effects of these  
22 symptoms are not entirely consistent with the medical evidence and other evidence in the record  
23 for the reasons explained in this decision." (AR 22).

24 The ALJ proceeded to provide a summary of the medical evidence in support of the RFC  
25 and her treatment of Plaintiff's testimony. (AR 22-25). Specifically with respect to Plaintiff's  
26 seizures, the ALJ concluded:

27 Given his dizziness and seizure episodes, the evidence supports that  
28 the claimant can never climb ladders, ropes, or scaffolds and needs  
to avoid concentrated exposure to vibration or work hazards, such



1 as moving machinery and unprotected heights. Due to difficulties  
2 balancing, the claimant is limited to no more than occasional  
balancing.

3 However, no additional limitations are supported and the claimant's  
4 statements about the intensity, persistence, and limiting effects of  
her [sic] symptoms are inconsistent with the evidence. The  
5 claimant had a normal electroencephalogram (8F/2). A provider  
noted that anti-epileptic therapy was efficacious (13F/10). Keppra  
6 helped when he was able to take it consistently (7F/5). Physical  
therapy helped improve the claimant's coordination and balance  
7 control (12F/4, 15F/31). He ambulated independently without any  
assistive device (7F/4, 15, 10F/15, 12F/1, 13F/3, 14F/1). The  
8 claimant also had mostly normal musculoskeletal strength (3F/12,  
4F/25, 9F/10, 12F/2, 14F/1). Given the improvement with treatment  
9 and physical therapy, no additional limitations are supported in the  
residual functional capacity. Although, the claimant and multiple  
10 third-party statements indicated that the claimant was not able to be  
alone, he attended multiple exams throughout the relevant period  
without issue and improved with treatment.

11 Therefore, the evidence is not consistent with the extent of the  
12 alleged limitations. The claimant has also been diagnosed with an  
intellectual and learning disability. A provider noted that the  
13 claimant struggled to hold employment due to learning difficulties  
(1F/2). He has a history of special education services throughout his  
14 formal education (1F/5, 22E). Neuropsychological testing revealed  
a full-scale IQ score of 70 (1F/5). Testing of the attentional  
15 processing of information was in the below average range (1F/5).  
At another exam, testing revealed low-average perceptual reasoning  
16 and a borderline working memory and processing speed (9F/7). In  
addition, his reading ability was at the fourth grade level (1F/5).  
17 The claimant complained of memory difficulties as well (13F/4).  
He was able to discuss current events, but had difficulty recalling  
18 the number of states and the current president (9F/5). The claimant  
also had difficulty completing multi-step tasks (6F/14).

19 The evidence supports that the claimant is limited to simple,  
20 routine, and repetitive tasks. Due to processing speed and memory  
testing, the claimant can have no production rate or constant motion  
21 job tasks. As testing revealed that the claimant could read at a  
fourth grade level, the claimant can have no job tasks that require  
22 reading more than simple notes or signs and no more than basic  
math. However, no additional limitations are supported and the  
23 claimant's statements about the intensity, persistence, and limiting  
effects of her symptoms are inconsistent with the evidence. The  
24 claimant was alert and attentive during exams (1F/4, 9F/5, 17F/4).  
He was cooperative on exam (1F/4, 9F/5). The claimant's memory  
25 was intact and he recalled three of three objects on exam (9F/5,  
10F/15). His thoughts were clear, coherent, and well organized  
26 (9F/5). He has not been hospitalized for psychiatric reasons (9F/4).  
He also denied having any suicidal ideation (9F/4). Moreover, the  
27 claimant has been able to work in the past despite these conditions  
(3E/1). As such, the evidence is not consistent with the full extent  
28 of the alleged limitations to understanding and following



1 instructions (5E). Therefore, no additional limitations are supported  
2 in the evidence.

3 (AR 22-23)

4 Review of the ALJ's decision reveals that despite finding Plaintiff's testimony was not  
5 entirely consistent with the medical evidence, the ALJ largely credited Plaintiff's testimony and  
6 included corresponding limitations. For example, based on testimony regarding the seizures and  
7 dizziness, the ALJ included in the RFC that Plaintiff "can never climb ladders, ropes, or scaffolds  
8 and needs to avoid concentrated exposure to vibration or work hazards, such as moving  
9 machinery and unprotected heights." (AR 22). Consistent with Plaintiff's testimony that he  
10 struggled with math and English, the ALJ found he could "have no job tasks that require reading  
11 more than simple notes or signs and no more than basic math." (AR 23).

12 When the ALJ did reject Plaintiff's symptom allegations, she provided reasons for doing  
13 so. For example, the ALJ found the alleged limitations with talking were not supported by the  
14 record, including reports that Plaintiff had fluid speech and was clear and coherent on exam. (AR  
15 22). Specifically with respect to his seizures, the ALJ rejected the allegation that Plaintiff "was  
16 not able to be alone" because he "attended multiple exams throughout the relevant period without  
17 issue and improved with treatment." (AR 23). After imposing limitations based on Plaintiff's  
18 learning abilities, the ALJ explained that additional limitations were not warranted based on the  
19 medical records and the fact that Plaintiff "has been able to work in the past despite these  
20 conditions." (AR 23).

21 The Court finds the ALJ sufficiently explained her reasons for discounting Plaintiff's  
22 symptom testimony based on evidence in the record. The Court can readily follow her reasoning  
23 and meaningfully review those reasons. *See, e.g., Guthrie v. Kijakazi*, No. 21-36023, 2022 WL  
24 15761380, at \*1 (9th Cir. Oct. 28, 2022) (citing *Kaufmann v. Kijakazi*, 32 F.4th 843, 851 (9th Cir.  
25 2022) (stating that the court considers "the ALJ's full explanation" and the "entire record"));  
26 *Mazon v. Comm'r of Soc. Sec.*, No. 1:22-cv-00342-SAB, 2023 WL 3177797, at \*7 (E.D. Cal.  
27 May 1, 2023) (the ALJ's sequence of summarizing evidence followed by giving specific findings  
28 followed a conventional organization for the ALJ's decision writing which is sufficiently clear for

1 judicial review).

2 Overall, the ALJ credited Plaintiff's testimony and provided specific, clear, and  
3 convincing reasons for the portions of Plaintiff's testimony she discounted. Substantial evidence  
4 supports the ALJ's decision such that it must be affirmed.

5 **IV. CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion for summary judgment (Doc. 21) is DENIED;  
8 2. The ALJ's decision is affirmed; and  
9 3. The Clerk of the Court shall enter judgment in favor of Defendant, terminate any  
10 deadlines, and close this case.

11 IT IS SO ORDERED.

12 Dated: March 24, 2025

13   
14 UNITED STATES MAGISTRATE JUDGE